It is therefore in my opinion abundantly clear that in this case the Post Office was the agent of the respondent Board.

For reasons which are apparent in the decision of the Court of Appeal Straits Settlements previously referred to, I would prefer not to use the term "true owner" but to state that for the above reasons I am of the opinion that the Respondent Board is entitled to maintain an action for conversion of the cheque referred to in these proceedings.

I would dismiss the appeal with costs and order payment out to Respondent of the deposit in Court.

Appeal dismissed.

Solicitors: *Bannon & Bailey; Shearn Delamore & Co.*

RATNAM & ANOR. v. PUBLIC INSURANCE CO., LTD.

[C. A. (Mathew C.J. (F.M.), Knight and Whitton JJ.) October 24, 1956]

[Singapore — Civil Appeal No. 18 of 1956]

Road Traffic Ordinance (Cap. 227), s. 51 — Claim against insurers — Vehicle driven by person holding provisional driving licence unaccompanied by licensed driver — Whether vehicle driven with authority.

This was an appeal against the decision of Whyatt C.J. reported in (1956) M.L.J. 152, where the facts are fully set out. The Court of Appeal dismissed the appeal holding:

(1) the commercial risk undertaken was that the company accepted liability where the car was being driven with the permission of the insured by a competent driver. In this case at the time of the accident the holder of the provisional licence was driving the car on the road in breach of an essential condition of his provisional licence, and therefore, was not by law permitted to drive a car on the road;

(2) the law only permits a person who is learning to drive to drive a car on a road if he complies with the prescribed regulations. If he drives a car in breach of those conditions, then he is driving it without authority under the law.

COURT OF APPEAL.

Denis Murphy for the appellant.

Philip Hoalim Sr. for the respondents.

Mathew C.J. (F.M.) and **Knight J.** (with whom **Whitton J.** agreed): — The plaintiffs-appellants are seeking to recover, under section 51 of the Road Traffic Ordinance (Cap. 227), $20,500 and costs obtained by them in an action for negligence against one Griffin. The car which was involved in the accident was under a hire-purchase agreement from the respondents to the Teng Motor Service. The respondents were also the insurers. Shortly after this transaction the Teng Motor Service were anxious to sell the car and on the 23rd of June 1954 Chow Ah Tek, the sole proprietor of Teng Motor Service, agreed to sell the car to one Griffin for $2,400. It was explained that the various documents in respect of the car could not be transferred to Griffin until Chow Ah Tek had paid off the instalments due under the hire-purchase agreement. Griffin was apparently agreeable and paid $600 as a deposit, promising to pay the balance when funds that he was expecting became available. Later, Chow Ah Tek delivered the car to Griffin's house. It is quite clear that what Chow Ah Tek wanted was to dispose of the car at a profit. He was aware that Griffin only held a provisional licence, and it was for this reason that he delivered the car personally at Griffin's house.

Two months later Griffin was involved in an accident when driving alone in the car, without the supervision of a licensed driver, and one Kanniah s/o Packiri was killed as a result of his negligent driving. The administrators of the estate of the deceased are now seeking to recover from the respondents the fruits of the judgment obtained by them against Griffin, on the ground that the respondents were liable under the terms of the policy of insurance entered into by them with the Teng Motor Service the hirer. The relevant clause of the policy reads:—

"3. In terms of and subject to the limitations of the indemnity which is granted by this section to the insured the Company will indemnify any person who is driving such motor car on the insured's order or with his permission provided that such person (c) holds a licence to drive such motor car or has held and is not disqualified by order of a Court of Law or by reason of any Enactment or regulation in that behalf from holding or obtaining such a licence."

The respondents disclaimed liability on two grounds:—

(i) At the time of the accident Griffin was not driving with the permission of the insured, the Teng Motor Service; and

(ii) Griffin was not covered by the policy as he was unaccompanied, in breach of a condition of his provisional licence, by a licensed driver as supervisor.

In our view, the first ground can be dealt with shortly. The evidence given by Chow Ah Tek negatives his having given Griffin permission to drive. It is not necessary for the decision of this appeal, but I am very doubtful whether a provisional licence is covered by the words "holds a licence to drive such motor car or has held . . . . such a licence". If "licence to drive" includes a provisional licence, then it would follow that liability would exist in respect of a person driving with the permission of the accused, who had previously held a provisional licence and at the moment of driving held no licence at all. The commercial risk undertaken would seem to us to be that the Company accepted liability where the car was being driven with the permission of the insured by a competent driver. Whether Chow Ah Tek did expressly or impliedly give

permission to Griffin to drive or whether he had contracted himself out of being able to accord permission is, in our view, of no great moment for, at the time of the accident Griffin was driving the car on the road in breach of an essential condition of his provisional licence and, therefore, was not by law permitted to drive a car on the road.

It has been submitted on behalf of the appellants that, as the law makes it an offence not to comply with a condition subject to which a provisional license is granted, it follows that in the absence of an express provision any provisional licence holder on the road who is in breach of the condition of his licence is still "the holder of a licence". The form of a provisional licence reads as follows :—

"The Motor Vehicles (Driving Licences) Rules 1948
[Rule 14(4)]

Form of Provisional Licence
Road Traffic Ordinance 1941
DRIVING LICENCE

.....
of .....
is hereby licensed to drive .....
from ..... 19 ....., until ..... 19 .....
inclusive, subject to the conditions prescribed in paragraph (4) of Rule 14 of the Motor Vehicles (Driving Licences) Rules, 1948.
Fee of $2 received.
(Issuing authority) .....".

It is clear to us that the law only permits a person who is learning to drive to drive a car on a road if he complies with the prescribed regulations. If he drives a car in breach of those conditions, then he is driving it without authority under the law.

We would dismiss this appeal with costs.

Appeal dismissed.

Solicitors : *Murphy, Dunbar & Chung; Philip Hoalim & Co.*

ANTHONY v. ANTHONY

[O. C. J. (Smith J.) April 22, 1957]

[K. L. — Divorce Suit No. 2 of 1956]

Divorce Ordinance, 1950, s. 4(3)(b) — Restitution of conjugal right; — Divorce and Matrimonial Causes Rules, 1953, rr. 4(1)(d) & 21 — Residence — Particulars by affidavit instead of by letter — Costs.

Where the petitioner in his petition for restitution of conjugal rights merely alleged residence within the Federation of Malaya, and not the precise address at which he had his residence, this was held to be sufficient.

And where the petitioner delivered his particulars by affidavit to the respondent at her request in compliance with rule 21 of the Divorce and Matrimonial Causes Rules, 1953, instead of by written letter, costs in respect of the particulars, when awarded, should be limited to costs for giving particulars by written letter.

PETITION FOR DIVORCE.

Williamson for the respondent.

K. L. Devaser for the petitioner.

Smith J. : — I have reserved judgment on paragraphs 1 and 4 of the respondent's application (31) dated 19th February, 1957.

Paragraph 1 of the application relates to particulars of residence. Section 4(3) (b) of the Divorce Ordinance, 1950, provides that to give the Court jurisdiction in a suit for restitution of conjugal rights both parties to the marriage must reside in the Federation at the commencement of the proceedings. Rule 4(1) (d) of the Divorce and Matrimonial Causes Rules, 1953, provides that "the petition shall state . . . the residence . . . of the parties to the marriage . . . at the date of the institution of the cause." In his petition the petitioner has stated that he resides in the Federation. He has not given a precise address at which he has his residence.

The respondent has argued that it is necessary that a precise address be given. The principle authority which he can quote is a form of petition to be found in *Latey* on Divorce. In that form the information regarding residence is given in the form of a precise address. In *Rayden* on Divorce, 6th edition, however, paragraph 7 of Form 8 at page 1036 — Wife's petition for restitution of conjugal rights — jurisdiction based on residence — reads as follows :—

"Jurisdiction by residence. 7. That in the alternative the petitioner and the respondent were resident in England at the time when cohabitation between them ceased as set out in paragraph 9 hereof."

I consider that this supports the petitioner's argument that all that is required is that the petitioner must allege residence. I agree with Mr. Devaser that that bare statement is sufficient. If particulars of the residence are required, these can be obtained in the usual way but I can see no necessity for any precise residence to be alleged in the petition. Paragraph 1 of the application is therefore dismissed.

In the proceedings in open Court on 29th January, 1957, the respondent asked that particulars of residence within the Federation be supplied to her before she amends her own pleadings. It appears that as a result of this request the affidavit of the petitioner of 4th February, 1957 (27 on file) was filed. The petitioner has chosen to comply with rule 21 by delivering his particulars by affidavit when only a letter was necessary. I do not consider that there is any necessity for the affidavit to be struck out but the costs which might ultimately be awarded in respect of particulars should be limited to the costs for giving particulars by written letter.

Paragraph 4 of the application is dismissed.

Order accordingly.